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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN PATRICK SMITH,

Defendant.

CR 23-15-M-DLC

OFFER OF PROOF

THE CHARGE

The defendant, KEVIN PATRICK SMITH, is charged by indictment with two counts of Threats to Injure and Murder a United States Senator, in violation of 18 U.S.C. § 115(a)(1)(B), (b)(4).

PLEA

The defendant, KEVIN PATRICK SMITH, will enter a voluntary plea of guilty to count 1 of the indictment. The motion for change of plea filed with the Court represents, in the government's view, the most favorable disposition of the case against the defendant. *See, e.g., Missouri v. Frye*, 132 S. Ct. 1399 (2012).

ELEMENTS

The defendant will plead guilty because he is guilty of count 1 contained in the indictment. In pleading guilty to count 1, the defendant acknowledges that:

First, the defendant made a threat to murder;

Second, the threat was made against a United States official;

Third, the defendant made the threat with the intent to impede, intimidate, interfere with, or retaliate against that official; and,

Fourth, the defendant communicated the threat while the United States official was engaged in or on account of the performance of his duties.

PENALTY

Count 1 of the indictment charges the crime of Threats to Murder a United States Senator, in violation of 18 U.S.C. § 115(a)(1)(B), (b)(4). This offense

carries a maximum term of imprisonment of ten years, a \$250,000 fine, three years of supervised release, and a \$100 special assessment.

ANTICIPATED EVIDENCE

If this case were tried in United States District Court, the United States would prove the following:

Senator Jon Tester is a United States official, who is a Member of Congress, as defined in 18 U.S.C. § 115(c)(4).

On January 30, 2023, Kevin Patrick Smith made numerous threatening calls to Senator Tester by phone, leaving voicemails at Senator Tester's office in Kalispell, Montana. In one instance, Smith stated:

There is nothing I want more than to have you stand toe to toe with me. You stand toe to toe with me. I rip your head off. You die. You stand in a situation where it is physical between you and me. You die.

. . . .

I will never stop. . . . And I would love to destroy you and rip your fucking head from your shoulders. That is no problem. Call that a threat. Send the FBI.

Smith also left a message for Senator Tester that said:

I would love to fucking kill you. I would love to see your FBI at my door. I would love to see something in the news.

Smith acknowledged in the recording that he threatened Senator Tester and such threats were "on purpose." Smith made the threats because he was upset with Senator Tester's political decisions.

The United States would have presented this evidence through the testimony of law enforcement and lay witnesses.

DATED this 30th day of March, 2023.

TIMOTHY J. RACICOT
First Assistant United States Attorney
Attorney for the United States, Acting
Under Authority Conferred by
28 U.S.C. § 515

/s/ Ryan G. Weldon
RYAN G. WELDON
Assistant U.S. Attorney